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7 DOUGLAS E. ROBINSON,
8 Plaintiff,
9 v.
10 KIRAN AHUJA,
11 Defendant.

Case No. 20-cv-07907-JSC

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**ORDER RE: DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

20 Re: Dkt. No. 55

21 Douglas Robinson, a former federal employee, brings claims for employment
22 discrimination on the basis of race and age arising from Defendant's failure to promote him to a
23 GS-13 grade in fiscal year 2014. (Dkt. No. 20.)¹ Before the Court is Defendant's motion for
24 summary judgment. (Dkt. No. 55.) Having carefully considered the briefing, and with the benefit
25 of oral argument on December 15, 2022, the Court GRANTS the motion. Based on the summary
judgment record, no reasonable trier of fact could find that Mr. Robinson qualified for the
promotion or that he was not promoted because of his race or age.

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FACTUAL BACKGROUND

21 Mr. Robinson was an employee of the United States Office of Personnel Management
22 ("OPM") who teleworked full-time from his home in Pinole, California. As of 2010, Mr.
23 Robinson's role was Human Resource Specialist at the GS-12 grade. (Dkt. No. 55-2 at 11; Dkt.
24 No. 60 ¶ 2.) Mr. Robinson is an African American man and was in his late sixties during the time
period at issue.

26 The "full performance level" for Mr. Robinson's job was GS-13. An employee could
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¹ Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the
ECF-generated page numbers at the top of the documents.

1 advance to the full performance level through “career ladder promotions.” (Dkt. No. 56-6 at 2; *see*
2 Dkt. No. 56 ¶ 3.) Career ladder promotions were non-competitive, meaning that every employee
3 in the job could be promoted to GS-13 if they met the requirements; one employee’s promotion
4 would not impact their coworkers’ eligibility for promotion. (Dkt. No. 56 ¶ 18.) 5 C.F.R. §
5 335.104 and the OPM Human Resources Handbook set out the requirements for a career ladder
6 promotion. (*Id.* ¶ 3.) In particular:

7 No employee shall receive a career ladder promotion unless his or her
8 current rating of record under part 430 of this chapter is “Fully
9 Successful” (level 3) or higher. In addition, no employee may receive
10 a career ladder promotion who has a rating below “Fully Successful”
11 on a critical element that is also critical to performance at the next
12 higher grade of the career ladder.

13 5 C.F.R. § 335.104; (*see* Dkt. No. 56-2 at 7–8, 10; Dkt. No. 56-6 at 8.) Thus, a career ladder
14 promotion required an employee to be rated “Fully Successful” or higher on both his overall
15 annual performance appraisal and on each “critical element” of his current grade that was also a
16 critical element of the next grade.² In FY 2014, the critical elements for GS-12 were
17 “Writing/Written Communication, Oral Communication/Speaking, Teamwork, Customer Service,
18 Technical Competence, Work Accomplishment, Problem Solving, [and] Financial
19 Accountability.” (Dkt. No. 56-5 at 1; Dkt. No. 57 ¶ 9; *see* Dkt. No. 55-2 at 31–33.) Those were
20 also critical elements of GS-13. (Dkt. No. 56 ¶ 3.) According to Mr. Robinson, during his
21 orientation he was not given a written job description or advised of specific performance
22 standards. (Dkt. No. 60 ¶¶ 5–6, 17.) But he reviewed his annual performance appraisals and
23 discussed them with his supervisors. (Dkt. No. 55-2 at 23, 36; *see* Dkt. No. 60 ¶ 11 (Mr. Robinson
24 understood that a rating of “Fully Successful” or higher was required for the GS-13 promotion).)

25 In FY 2011, Mr. Robinson’s supervisor rated him “Exceeds Fully Successful” overall.
26 (*Dkt. No. 55-4 at 1; see Dkt. No. 56 ¶ 5.*) The comments noted:

27 You’ve done a great job with some tough clients. Keep up the hard
28 work into this next year[.] Communicate more with me on your
project and resources needs, continue to work towards meeting your

² The ratings scale was Outstanding, Exceeds Fully Successful, Fully Successful, Minimally Satisfactory, and Unsatisfactory. (*See Dkt. No. 55-4 at 1.*)

1 deadlines and moving your projects forward, utilize your resources to
2 their fullest extent, and continue to communicate closely with your
3 clients.

4 (Dkt. No. 55-4 at 1.)

5 In FY 2012, Mr. Robinson's supervisor rated him "Fully Successful" overall. (Dkt. No.
6 55-5 at 2; *see* Dkt. No. 56 ¶ 5.)

7 Even though Doug received two minimally satisfactory ratings, I have
8 increased his overall rating to fully successful. . . . The primary reason
9 the rating has been raised is that even though Doug received negative
10 feedback from a major client, the client was very difficult to work
11 with and often times refused to respond to Doug's requests.
12 Additionally, Doug learned and worked with very limited and unique
13 classification guidance Finally, Doug received high marks for
14 his technical competency and problem solving skills. However, Doug
15 needs to watch his timeliness and take an active role[e] in learning the
16 financial responsibilities of a project lead and manager. . . .
17 Technically, Doug is excellent as a GS-12. Administratively, Doug
18 needs to work to meet the requirements of his GS-12 position.

19 (Dkt. No. 55-5 at 2.) Mr. Robinson was rated "Minimally Satisfactory" on the elements of "Work
20 Accomplishment" ("Timeliness has been an issue") and "Financial Accountability" ("Multiple
21 billing mistakes"). (*Id.* at 9, 11.)

22 In FY 2013, Mr. Robinson's new supervisor Michelle Arcara rated him "Minimally
23 Satisfactory" overall. (Dkt. No. 55-6 at 1.)

24 A rating of minimally satisfactory on one or more critical elements
25 results in an overall rating of minimally satisfactory. Work
26 accomplishment continues to be an issue. Based on feedback from the
27 final quarter of the FY, and direct observation, it is evident that
28 timeliness is an issue, as is quality. The quality of the actions
 produced by Doug is not that of a GS-12. All other critical factors
 were fully successful or higher. Just need Doug to complete his
 assignments, in a timely manner and of consistent quality.

29 (*Id.*) Mr. Robinson was rated "Minimally Satisfactory" on the element of "Work
30 Accomplishment" ("timeliness and quality were issues on multiple occasions"). (*Id.* at 7.)

31 In FY 2014, Mr. Robinson and others in his role had eight different acting supervisors,
32 some for as few as two weeks, due to Ms. Arcara taking a leave. (Dkt. No. 56 ¶ 4; *see* Dkt. No. 60
33 ¶¶ 11–12; Dkt. No. 61 ¶ 4.) HR Strategy Group Manager Jason Parman conducted Mr.
34 Robinson's performance appraisals based on input and ratings from his acting supervisors. (Dkt.

1 No. 56 ¶ 6; Dkt. No. 61 at 6.) For the mid-year review in April 2014, Mr. Parman considered the
 2 ratings that five acting supervisors had given Mr. Robinson—three “Minimally Satisfactory,” one
 3 “Fully Successful,” and one “Exceeds Fully Successful”—in proportion to the length of time each
 4 had supervised him. (Dkt. No. 56 ¶ 9; Dkt. No. 56-3 at 1; Dkt. No. 61 ¶ 6.)³ Mr. Parman did not
 5 ask them specifically about whether Mr. Robinson should be promoted to GS-13. (Dkt. No. 60 ¶¶
 6 12, 14–16; Dkt. No. 61 ¶¶ 8–10, 15.) Mr. Parman also considered monthly utilization reports
 7 (showing Mr. Robinson’s ratio of billable hours to overall work time), twice-yearly customer
 8 surveys, and his own observations. (Dkt. No. 56 ¶¶ 8, 11.) At the mid-year review, Mr. Parman
 9 told Mr. Robinson that he rated his performance “Minimally Satisfactory.” (*Id.* ¶ 7.)

10 Laura Knowles took over as Mr. Robinson’s acting supervisor after the mid-year review
 11 and supervised him for the longest period of time in FY 2014. (*Id.* ¶ 10.) Plaintiff attests:

12 Morale was low because of Knowles’ 120-day temporary detail [as
 13 supervisor]; experienced Black HR Specialists consisting of Rachelle
 14 Booth and Morris Blakely[] knew the detail was a prelude of
 15 promoting Knowles to the position of our permanent first-line
 16 supervisor, a position in which Blakely and Booth were interested in
 17 filling. In addition, other Black HR Specialists such as me and Delton
 18 York were wary that Knowles was incapable of providing career
 19 guidance or unwilling to give career-ladder promotion opportunities.

20 (Dkt. No. 60 ¶ 13.) At some point, Mr. Robinson “and a similarly situated class member
 21 expressed frustration that Knowles would not be able to help us achieve a career-ladder promotion
 22 because of her sheer lack of knowledge of the technical requirements of the job.” (*Id.* ¶ 14.)
 23 “Knowles burst into tears, to which Parman threatened [Mr. Robinson] and other similarly situated
 24 employees by making it clear that Parman had the power to place or remove anyone wherever he
 25 wanted within the organization.” (*Id.*)

26 For the annual review in September 2014, Mr. Parman added the rating that acting
 27 supervisor Ms. Knowles had given Mr. Robinson since the mid-year review—“Minimally
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³ According to Mr. Robinson, Morris Blakely did not rate him “Minimally Satisfactory” in FY 2014. (Dkt. No. 60 ¶ 20.) Mr. Blakely supervised Mr. Robinson for 12.5 percent of FY 2014, (Dkt. No. 56 ¶ 10), a proportion too small to control Mr. Robinson’s overall rating, (*see id.* ¶ 14 n.1).

1 Satisfactory”—in proportion to the length of time she had supervised him. (Dkt. No. 56 ¶ 10; Dkt.
2 No. 56-3 at 2.) Mr. Parman considered two requests from customers that Mr. Robinson be taken
3 off their projects due to poor performance. (Dkt. No. 56 ¶ 12.)⁴ Mr. Parman considered the
4 utilization report showing that Mr. Robinson had a rate of 33 percent, the lowest in the department
5 (range of 38 to 77 percent). (*Id.* ¶ 13; Dkt. No. 56-4 at 1.) Mr. Parman ultimately rated Mr.
6 Robinson “Minimally Satisfactory” overall. (Dkt. No. 56 ¶¶ 7–8, 12–13.) He rated Mr. Robinson
7 “Minimally Satisfactory” on the elements of “Teamwork,” “Technical Competence,” “Work
8 Accomplishment,” and “Financial Accountability,” and “Unacceptable” on the element of
9 “Customer Service.” (*Id.* ¶ 13; Dkt. No. 56-3 at 4–9.) Because Mr. Robinson was rated
10 “Minimally Satisfactory” both overall and on several critical elements of the GS-12 position, he
11 was not eligible for promotion to GS-13 in FY 2014. (Dkt. No. 56 ¶¶ 14–15.) He was not
12 promoted in FY 2014.

13 Mr. Robinson observed Mr. Parman make “a hostile and inappropriate statement at the
14 workplace which caused me to believe that he was only interested in hiring and promoting
15 Caucasian employees.” (Dkt. No. 60 ¶ 19.)

16 It was obvious to me that Mr. Parman was recruiting only Caucasian
17 applicants from Missouri State University[, his alma mater]. During
18 my tenure, I was not aware of a single Black applicant recruited by
19 Mr. Parman from MSU. Therefore, when Mr. Parman stated that the
20 MSU recruits are “... all like me ...”, it was obvious he was speaking
of race. If Mr. Parman wanted to dispel any doubts about his intent in
hiring and recruiting from MSU, he failed to make that clear to the
Black HR Specialists to whom he was speaking.

21 (*Id.*; *see* Dkt. No. 61 ¶ 14.) Mr. Robinson also observed that Mr. Parman and OPM favored
22 employees in the Kansas City area and awarded them more promotions. (Dkt. No. 55-2 at 34, 40–
23 41.)

24 Mr. Robinson identified a white coworker, Jason Hohman, who was promoted to GS-13.
25 (Dkt. No. 60 ¶ 18; *see* Dkt. No. 61 ¶ 13.) Ms. Arcara attests that she recommended Mr. Hohman
26 for promotion in FY 2013 and that his performance had been at least “Fully Successful.” (Dkt.

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28 ⁴ According to Mr. Robinson, clients did not give negative feedback about him to Mr. Parman.
(Dkt. No. 60 ¶ 21.)

1 No. 55-3 at 8.) According to Mr. Robinson, Mr. Hohman was promoted in FY 2014 while Ms.
2 Arcara was on leave, and he was evaluated by Mr. Parman rather than by all his acting
3 supervisors. (Dkt. No. 60 ¶ 18.) “To the extent Mr. Hohman was not required to be in the
4 position of HR Specialist for at least one year . . . , [he] received preferential treatment,” (*id.*; *see*
5 Dkt. No. 56 ¶ 17); however, Ms. Arcara attests that Mr. Hohman had been in the position for at
6 least one year and therefore met the “time in grade” requirement for promotion, (Dkt. No. 55-3 at
7 8).

8 DISCUSSION

9 I. Evidentiary Issues

10 Mr. Robinson’s objections to Defendant’s evidence are DENIED. (Dkt. No. 59.)
11 Although they are improperly raised in a standalone filing rather than in the body of his
12 opposition, *see* N.D. Cal. Civ. L.R. 7-3(a), the Court considered Mr. Robinson’s objections. But
13 the evidence is relevant, not more prejudicial than probative, based on personal knowledge, and
14 otherwise complies with Federal Rules of Evidence 106, 401, 403, 602, 801, and 901.

15 Defendant’s objections to Mr. Robinson’s evidence are DENIED as moot. (Dkt. No. 67 at
16 7–11.) Even if the Court considers Mr. Robinson’s evidence, Defendant is entitled to summary
17 judgment, as explained below.

18 II. Disparate Treatment Claims

19 Mr. Robinson brings claims for disparate treatment race discrimination under Title VII of
20 the Civil Rights Act of 1964 (“Title VII”) and age discrimination under the Age Discrimination in
21 Employment Act (“ADEA”). Both claims arise from the FY 2014 failure to promote. (*See* Dkt.
22 No. 30 at 8.)

23 At summary judgment, the burden-shifting framework applies to both claims. *See Shelley*
24 *v. Geren*, 666 F.3d 599, 607–08 (9th Cir. 2012); *Dominguez-Curry v. Nev. Transp. Dep’t*, 424
25 F.3d 1027, 1037 (9th Cir. 2005). First, to establish a prima facie case of disparate treatment
26 discrimination, a plaintiff must show: “(1) he belongs to a protected class; (2) he was qualified for
27 the position; (3) he was subject to an adverse employment action,” such as failure to promote; and
28 “(4) similarly situated individuals outside his protected class were treated more favorably” or

1 “other circumstances surrounding the adverse employment action give rise to an inference of
2 discrimination.” *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir. 2010); *Chuang v.*
3 *Univ. of Cal. Davis*, 225 F.3d 1115, 1123 (9th Cir. 2000); *see Shelley*, 666 F.3d at 608. “At
4 summary judgment, the degree of proof necessary to establish a prima facie case is minimal and
5 does not even need to rise to the level of a preponderance of the evidence.” *Dominguez-Curry*,
6 424 F.3d at 1037 (cleaned up).

7 If the plaintiff establishes a prima facie case, the burden of production shifts to the
8 employer to offer a legitimate, non-discriminatory reason for the adverse employment action. *See*
9 *Shelley*, 666 F.3d at 608; *Dominguez-Curry*, 424 F.3d at 1037. If the employer meets its burden,
10 the burden of persuasion shifts back to the plaintiff to establish that the employer’s legitimate,
11 non-discriminatory reason is pretext. *See Shelley*, 666 F.3d at 608; *Dominguez-Curry*, 424 F.3d at
12 1037. At trial, a plaintiff must carry a different burden for disparate treatment claims under Title
13 VII and the ADEA. He must prove that race was at least “a motivating factor” in the adverse
14 employment action, but that age was the “but-for” cause of the adverse employment action. *See*
15 *Shelley*, 666 F.3d at 607–08. In either case, the ultimate question is whether a reasonable trier of
16 fact could find he was not promoted because of his age or race. *See* 29 U.S.C. § 623(a)(1); 42
17 U.S.C. § 2000e-2(a)(1).

18 Defendant moves for summary judgment on the grounds that a reasonable trier of fact
19 could not find Mr. Robinson was qualified for the promotion or that the circumstances give rise to
20 an inference of discrimination. Defendant also moves on the grounds that even if Mr. Robinson
21 can establish a prima facie case, a reasonable trier of fact would be compelled to find that
22 Defendant had a legitimate, non-discriminatory reason for not promoting Mr. Robinson and the
23 reasonable trier of fact could not find that reason was pretext.

24 **A. Prima Facie Case**

25 Based on the allegations in Mr. Robinson’s complaint, there is an interplay between the
26 second and fourth elements of his prima facie case. He alleges he was qualified for the GS-13
27 promotion notwithstanding his FY 2014 annual performance appraisal because the appraisal was
28 biased and inaccurate, giving rise to an inference of discrimination. Thus, the Court analyzes the

1 second and fourth elements together. *See Shelley*, 666 F.3d at 608; *Hawn*, 615 F.3d at 1156;
2 *Chuang*, 225 F.3d at 1123.

3 There is insufficient evidence in the record from which a reasonable trier of fact could
4 conclude that, on paper, Mr. Robinson met the stated requirements for the GS-13 promotion. It is
5 undisputed that promotion to GS-13 required an employee to be rated “Fully Successful” or higher
6 on both his overall annual performance appraisal and on each critical element of GS-12. It is also
7 undisputed that, in FY 2014, Mr. Robinson was rated less than “Fully Successful” on his overall
8 appraisal and on five critical elements of GS-12. Defendant’s promotion policies were formal and
9 there is no evidence supporting an inference that they bent the rules, for example by promoting
10 others who were rated less than “Fully Successful.” *Cf. Lyons v. England*, 307 F.3d 1092, 1114
11 (9th Cir. 2002) (“[W]here, as here, the employer has not published the qualifications for positions
12 that were awarded without a competitive application process, it would be unreasonable to require a
13 plaintiff to present direct evidence of the actual job qualifications as part of his *prima facie*
14 case.”); *Chuang*, 225 F.3d at 1125 (concluding plaintiff met *prima facie* burden to establish he was
15 qualified, where plaintiff did not have experience in human genetics but at least one person who
16 had been promoted also did not have such experience). Thus, as a matter of law Mr. Robinson did
17 not, on paper, meet the stated requirements for the promotion he sought. *See Romo v. Spring*
18 *Window Fashions*, No. CVN040079HDMVPC, 2005 WL 8161892, at *3 (D. Nev. Nov. 23,
19 2005), *aff’d sub nom. Romo v. Springs Window Fashions Div., Inc.*, 263 F. App’x 640 (9th Cir.
20 2008) (concluding plaintiff did not meet *prima facie* burden to establish she was qualified, where
21 plaintiff undisputedly did not have the computer skills required in the promotion listing).

22 There is also insufficient evidence from which a reasonable trier of fact could conclude
23 that similarly situated individuals outside Mr. Robinson’s protected classes were treated more
24 favorably. *See Hawn*, 615 F.3d at 1156. Mr. Robinson identifies Mr. Hohman as a similarly
25 situated individual who was white and younger than 40 years old. The record supports an
26 inference that Mr. Hohman was outside Mr. Robinson’s protected classes and was treated more
27 favorably by being promoted to GS-13. But the record does not support an inference that Mr.
28 Hohman was similarly situated to Mr. Robinson because Mr. Hohman was rated “Fully

1 Successful” or higher and thus met the stated requirements for the promotion. Mr. Robinson’s
2 speculation that Mr. Hohman might not have been required to be an HR Specialist for one year,
3 and therefore was given preferential treatment, is contradicted by the actual evidence in the record
4 that Mr. Hohman met all the requirements for promotion, including the “time in grade.”

5 Moreover, there is insufficient evidence from which a reasonable trier of fact could
6 conclude that “other circumstances surrounding the adverse employment action give rise to an
7 inference of discrimination.” *Chuang*, 225 F.3d at 1123. Specifically, there is insufficient
8 evidence from which a reasonable trier of fact could conclude that Mr. Robinson was rated less
9 than “Fully Successful” *because of* his race or age. Nothing in the record suggests, for example,
10 that Mr. Robinson’s supervisors referred to his race or age explicitly or implicitly in their
11 appraisals. (Likewise, nothing in the record suggests that Mr. Hohman’s appraisals referred to his
12 race or age.) Nor does the record suggest that employees who performed similarly to Mr.
13 Robinson in some way received a higher rating than he did. Instead, the record evidence is that
14 Mr. Robinson’s FY 2014 appraisal echoed concerns that had been raised in previous years, by
15 different supervisors. Mr. Robinson’s belief that Mr. Parman was only interested in hiring
16 applicants from Missouri State University who were Caucasian like himself, and that Mr. Parman
17 favored employees in the Kansas City area, is insufficient to support a reasonable inference that
18 Mr. Robinson’s composite FY 2014 ratings were because of his race or age.

19 Mr. Robinson’s other arguments are insufficient to create a genuine dispute of fact for
20 several reasons. First, “an employee’s subjective personal judgments of [his] competence alone
21 do not raise a genuine issue of material fact.” *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267,
22 270 (9th Cir. 1996); *see Lyons*, 307 F.3d at 1115 (“[A]t summary judgment, a plaintiff’s self-
23 assessment of his performance is relevant in satisfying his minimal burden of showing
24 qualification at the initial, *prima facie* case, stage While we do not rely on this evidence
25 alone, we note it as relevant in combination with the other circumstantial evidence of
26 qualification.” (cleaned up)). Second, that Mr. Robinson served as an instructor for OPM’s
27 Human Resources Solutions’ Training on Demand Program and as an evaluator for OPM’s
28 Administrative Law Judge Program Office, (Dkt. No. 60 ¶¶ 8–10), is insufficient to support an

1 inference that he was qualified for the GS-13 promotion. There is insufficient evidence in the
2 record to support an inference that those appointments correspond with the critical elements of
3 GS-12 and GS-13 on which Mr. Robinson was rated less than “Fully Successful.” (See Dkt. No.
4 56 ¶ 13.) Thus, those appointments are not circumstantial evidence of qualification that, combined
5 with Mr. Robinson’s self-assessment of his performance, could satisfy his *prima facie* burden to
6 show he was qualified. *See Lyons*, 307 F.3d at 1115.

7 Third, Mr. Robinson’s unsupported allegation that Mr. Parman gave Ms. Knowles’
8 negative rating controlling weight is contradicted by the record; Mr. Parman weighted the acting
9 supervisors’ ratings in proportion to the length of time each had supervised Mr. Robinson.

10 Fourth, at oral argument Mr. Robinson asserted that Yvonne Ryan was a similarly situated
11 individual who was treated more favorably. However, neither his opposition nor the record
12 evidence discusses Ms. Ryan as a potential comparator. She appears only as one of Mr.
13 Robinson’s acting supervisors; her race, age, and favorable treatment are not explained. Thus, Mr.
14 Robinson’s argument does not create a genuine dispute of fact.

15 Finally, Mr. Robinson’s argument that Mr. Parman fabricated evidence as part of the equal
16 employment opportunity investigation process is not sufficiently supported by admissible
17 evidence. Mr. Robinson argues that Mr. Parman “knowingly submitted a spreadsheet on which he
18 represented that all acting managers opined that [Mr. Robinson] was not promotion ready in
19 FY2014.” (Dkt. No. 58.) The spreadsheet has a line titled “Robinson, Douglas E.” followed by
20 Mr. Robinson’s acting supervisors’ ratings: “Morris – MS,” “Michelle – MS,” “Rachelle – FS,”
21 “Firooz – EFS,” and “Yvonne – MS.” (Dkt. No. 56-3 at 1.) The Court infers that MS means
22 “Minimally Satisfactory,” FS means “Fully Successful,” and EFS means “Exceeds Fully
23 Successful.” The spreadsheet next has a line titled “Robinson, Douglas E. – Promotion Ready?”
24 followed by: “Morris – No,” “Michelle – No,” “Rachelle – No,” “Firooz – No,” and “Yvonne –
25 No.” (*Id.*) There is no other admissible evidence in the record about what this line means. Mr.
26 Robinson’s own declaration is not admissible for this purpose because it is not based on personal
27 knowledge; in any case, it does not help to explain what the spreadsheet line means. (See Dkt. No.
28 60 ¶¶ 12, 14–16.)

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Because there is insufficient evidence in the record from which a reasonable trier of fact
3 could conclude Mr. Robinson was “qualified” for a GS-13 promotion, that a similarly situated
4 individual outside his protected classes was treated more favorably, or that the circumstances give
5 rise to an inference of discrimination, he cannot meet his *prima facie* burden. *See Lyons*, 307 F.3d
6 at 1113 (“A plaintiff’s failure to offer evidence establishing a necessary element of his *prima facie*
7 case will ordinarily be fatal to his claim.”). Accordingly, Defendant is entitled to summary
8 judgment on both Mr. Robinson’s Title VII race discrimination claim and ADEA age
9 discrimination claim. *See Shelley*, 666 F.3d at 608; *Dominguez-Curry*, 424 F.3d at 1037.

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CONCLUSION

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Defendant’s motion for summary judgment is GRANTED.

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This Order disposes of Docket No. 55.

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IT IS SO ORDERED.

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Dated: December 16, 2022

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JACQUELINE SCOTT CORLEY
United States District Judge